

**EXEMPT RECORD REQUEST PER
GOVERNMENT CODE 6103**

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08-SEP-1995 11:37 AM

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City Clerk
City of Newport Beach
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92659-1768

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Gary L. Granville, Clerk-Recorder
Page 1 of 55 Fees: \$ 0.00
Tax: \$ 0.00

DA #7

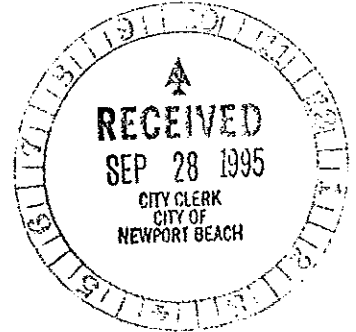
DEVELOPMENT AGREEMENT

BETWEEN

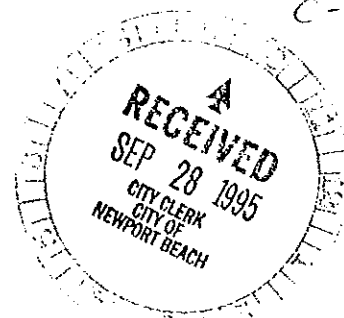
THE CITY OF NEWPORT BEACH

AND

PACIFIC VIEW MEMORIAL PARK



Approved July 10 , 1995
Ordinance No. 95- 26



DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into between the City of Newport Beach (the "City"), and Pierce Brothers, a California corporation doing business as Pacific View Memorial Park ("Pacific View") with respect to the updated master plan for development of Pacific View Memorial Park.

1. RECITALS. This Agreement relates to the following:

1.1 Purpose of Agreement. This Agreement is intended to:

- (a) Enable Pacific View to update its master plan for the buildout of the Property by obtaining the City's review and approval of updated design parameters for new or additional facilities at Pacific View Memorial Park consistent with the currently anticipated interment and funeral service needs of community members, which have changed over the years.
- (b) Minimize the impact of the buildout on adjoining residents by establishing strict, binding limits on the amount, height and location of permitted development as well as ensure compliance with numerous conditions on the timing of construction, the design of structures, and landscaping of the property.
- (c) Benefit the parties, nearby residents and the general public by serving as the primary legal means of vesting Pacific View's right to develop the property ensuring continued compliance with conditions on development that are intended to mitigate the impact of construction on nearby residents and doing so with a level of certainty that will minimize the potential for disputes in the future.

1.2 Authorization. This Agreement is authorized by, and is consistent with, the provisions of Section 65864 et seq. of the Government Code of the State of California, and Chapter 15.45 of the Newport Beach Municipal Code.

- 1.3 Interest of Pacific View. Pacific View is the owner of approximately forty five (45) acres of real property located in the City and more particularly described in Exhibit "A" and depicted in Exhibit "B" (the "Property").
- 1.4 Development of the Property. This Agreement grants Pacific View the statutory and contractual vested right to develop the Property during the Term of this Agreement consistent with the Pacific View Memorial Park's technical site plan (the "Technical Site Plan") attached as Exhibit "C", subject to compliance with the conditions and mitigation measures set forth in Section 3 with respect to Mitigated Negative Declaration (the "Negative Declaration"), General Plan Amendment No. 94-1(F) ("General Plan Amendment"), and Use Permit No. 3518 ("UP"), Site Plan Review (#69) (collectively, the "Discretionary Approvals"), as well as the additional conditions relating to public benefit set forth in Section 4 and other portions of this Agreement.
- 1.5 Planning Commission/City Council Hearings. The Planning Commission, after giving appropriate notice, held public hearings to consider the Discretionary Approvals on February 23 and March 9. The hearings were continued to April 20 to enable the circulation of an additional Negative Declaration and supplemental public notice regarding potential changes to Pacific View's Technical Site Plan requested by the Planning Commission, as well as notice regarding the potential Development Agreement which the Commission desired to consider. On April 20, after conducting further hearings regarding the Discretionary Approvals and the draft Development Agreement, and after further conditioning and modifying the Technical Site Plan, the Discretionary Approvals and the Development Agreement, the Planning Commission directed the preparation of approval resolutions, findings, conditions, and documents in accordance with the revised Technical Site Plan prepared by Pacific View to be prepared for its May 4 meeting. On May 4, after conducting further hearings, and after further conditioning and modifying the Technical Site Plan, the Discretionary Approvals and the Development Agreement, the Planning Commission voted to recommend approval of the same. The City Council conducted public hearings on the Technical Site Plan, Discretionary Approvals and this Agreement on

June 12 and 26, 1995. The City Council approved this Agreement on July 10, 1995.

1.6 Consistency. This Agreement is consistent with the various elements of the Newport Beach General Plan (as amended by the General Plan Amendment), and other applicable ordinances, plans, and policies of the City. This Agreement is also consistent with the purpose and intent of state and local laws authorizing development agreements in that it represents comprehensive planning, provides certainty in the approval of subsequent construction subject to compliance with conditions, reduces the economic costs of development by providing assurance to Pacific View that it may use and develop the Property in accordance with the Discretionary Approvals subject to compliance with the terms and conditions hereof, and provides assurance to adjoining property owners that restrictions and conditions designed to mitigate the impact of development, such as restrictions on the height, location and number of building envelopes will remain in full force during the term of this Agreement or, in the case of the prohibition against interments in, and the landscaping and maintenance of, the buffer zone, survive the expiration or termination of this Agreement.

1.7 Police Power. The City Council has determined that this Agreement is in the best interests of the health, safety and general welfare of the City, its residents and the public, was entered into pursuant to, and represents a valid exercise of, the City's police power, and has been approved in accordance with the provisions of state and local law that establish procedures for the approval of development agreements.

1.8 City Ordinance. On July 10, 1995, the City Council adopted Ordinance No. 95-26 approving this Agreement and authorizing the City to enter into this Agreement. The Adopting Ordinance will become effective on August 9, 1995.

2. DEFINITIONS.

2.1 The "Adopting Ordinance" refers to City Ordinance No. 95-26, adopted on July 10, 1995 by the City Council, which approved and authorized the City to enter into this Agreement.

- 2.2 "Agreement" refers to this Development Agreement between the City and Pacific View.
- 2.3 "Periodic Review" refers to the review of Pacific View's good faith compliance with this Agreement and conditions on development as set forth in Section 6.
- 2.4 The "Approval Date" means the date on which the City Council voted to adopt the Adopting Ordinance.
- 2.5 All forms of use of the verb "assign" and the nouns "assignment" and "assignee" shall include all contexts of hypothecations, sales, conveyances, transfers, leases, and assignments.
- 2.6 "CEQA" and the "CEQA Guidelines" refers to the California Environmental Quality Act and the CEQA Guidelines promulgated by the Secretary of Resources of the State of California, including any amendments adopted subsequent to the Effective Date.
- 2.7 "City Council" refers to the City Council of the City.
- 2.8 "Cure Period" refers to the period of time during which Default may be cured pursuant to Section 9.1.
- 2.9 A "day" or "days" refers to a calendar day, unless expressly stated to be a business day.
- 2.10 A "Default" refers to any material default, breach, or violation of the provisions of this Agreement. A "City Default" refers to a Default by the City, while a "Pacific View Default" refers to a default by Pacific View.
- 2.11 "Discretionary Approvals" shall collectively mean the Negative Declaration, General Plan Amendment, Use Permit, and Site Plan Review.
- 2.12 The "Effective Date" refers to the effective date of the Adopting ordinance and is the effective date of this Agreement.
- 2.13 An "Estoppel Certificate" refers to the document certifying the status of this Agreement required by Section 6.5 in the form of Exhibit "G".

- 2.14 An "Exhibit" refers to an exhibit to this Agreement. All Exhibits are incorporated as a substantive part of this Agreement. The Exhibits to this Agreement are:
- Exhibit A: Legal Description of the Property Map
 - Exhibit B: Map of Property
 - Exhibit C: The Technical Site Plan Dated July 10, 1995.
 - Exhibit D: Preliminary Landscape Plan Dated July 10, 1995.
 - Exhibit E: Building Site G Section Diagrams Dated July 10, 1995. (Reference points: Lots 19, 21, 23 & 28)
 - Exhibit F: Building Site E & H Section Diagram Dated July 10, 1995. (Reference point: Lot 7)
 - Exhibit G: Estoppel Certificate
 - Exhibit H: Restrictive Covenant
 - Exhibit I: Garden of Valor Improvement Plans Dated July 10, 1995.
- 2.15 "Existing General Regulations" means those General Regulations approved by the City on or before the Approval Date (irrespective of their effective date) and not rescinded or superseded by City action taken on or before the Approval Date.
- 2.16 "Future General Regulations" means those General Regulations adopted by the City after the Approval Date.
- 2.17 "General Regulations" means those ordinances, rules, regulations, policies, and guidelines of the City, which are generally applicable to the use of land and/or construction within the City and include, Uniform Building Codes and water and sewer connection and fee ordinances.
- 2.18 "General Plan" refers to the City's General Plan (as amended by the General Plan Amendment), plus all amendments to the General Plan adopted by the City on or before the Approval Date and effective prior to the Effective Date.

- 2.19 "Includes" and all contexts and forms of the words "includes" and "including" shall be interpreted to also state "but not limited to."
- 2.20 "Mortgagee" refers to the holder of a beneficial interest under any mortgage, deed of trust, sale-leaseback agreement, or other transaction whereby the property is used as security for a loan.
- 2.21 "Notice" refers to any written notice or demand between the parties required or permitted by this Agreement.
- 2.22 The "Parties" refers to the City and Pacific View and "Party" refers to either of the Parties.
- 2.23 "Planning Commission" refers to the Planning Commission of the City.
- 2.24 "Project Specific Approvals" includes, but is not limited to all specific permits, approvals, subdivisions maps, authorizations and licenses which are required by the Existing General Regulations and which may be requested by Pacific View in order to enable Pacific View to alter, improve, develop, and utilize the Property in accordance with the Technical Site Plan and the Discretionary Approvals and the terms and conditions of this Agreement.

3. **UNDERLYING DISCRETIONARY APPROVALS.** The City Council's approval of the Discretionary Approvals and this Agreement is subject to compliance with the numerous conditions and mitigation measures contained in the Discretionary Approvals which are designed to mitigate (to less-than-significant-levels) or eliminate potentially significant adverse effects of the complete development in accordance with the Technical Site Plan, and which ensure the health, safety, and welfare of nearby residents as well as Pacific View's patrons, visitors and employees. The conditions and mitigation measures imposed in conjunction with the discretionary approvals are described in Sections 3.1 through and including 3.3.

3.1 **Negative Declaration Mitigation Measures**

1. **Buffer Area Requirements.**

- a. **Provision of Buffer Area.** A landscaped buffer area (the "Buffer Area") shall be provided as depicted on Exhibit C and Exhibit D along the eastern property line

adjacent to residential properties. No structures, public roads, walkways, walls (other than retaining walls and existing underground utilities), ground interments or other form of burial, preservation of remains, plaques, memorials or monuments of any kind shall be permitted within the Buffer Area.

- b. Covenant and Agreement. Prior to the issuance of any building or grading permit for any development permitted by this Agreement (except any permit required to complete the improvements required by Section 4.4) Pacific View shall execute and record the covenant attached as Exhibit H, which ensures that the Buffer Area required by this Agreement shall be maintained in perpetuity subject to Pacific View's right to encroach into the Buffer Area, and to remove and/or disturb Buffer Area landscaping and irrigation. Pacific View's right to encroach into, or remove and/or disturb a portion of, the Buffer Area is subject to the following:

1. The encroachment, disturbance, or removal shall only be to the extent reasonably necessary to accommodate construction within Building Sites E and G; and

2. Pacific View is required to restore the Buffer Area, including landscaping and irrigation, to its condition prior to the encroachment, disturbance or removal as soon as possible after the encroachment is no longer necessary to accommodate construction activities.

Pacific View shall have the right to enter onto the Buffer Area as necessary or appropriate to repair or maintain the integrity of any slope.

- c. Buffer Area Landscaping/Irrigation System. The Buffer Area shall be landscaped and improved with an irrigation system. Except for slope areas, the Buffer Area shall be provided with a below ground permanent irrigation system. Slope areas shall be improved with an above-ground irrigation system consisting of U.V. resistant PVC

pipings. The landscaping shall be installed in accordance with a final landscape plan prepared by a licensed landscape architect which has been approved by the Planning Director and which fully complies with the preliminary landscape plan attached as Exhibit D (the "Final Landscape Plan"). The Final Landscape Plan submitted by Pacific View shall depict location of planting, the minimum number of planting required, and the type and size of plantings such that, in comparison with the Preliminary Landscape Plan, there will be the same screening of Community Mausolea and Building Sites E, D, F, G and H from the perspective of ground floor views from existing residences adjacent to the eastern property line consistent with the 430 foot mean sea level elevation limitation in the "Height Limitation Area" designated on the Technical Site Plan (Exhibit C).

- d. Installation of Landscaping and Irrigation. The installation of all required Buffer Area landscaping and related irrigation shall be initiated as described by Section 4.6 of this Agreement, but prior to issuance of building permits for the construction of the remaining phase of Sunset Court in Building Site G. Except as provided in Section 4.6 of this Agreement, the remainder of landscaping and related irrigation shall be installed during the individual Community Mausolea projects.

All landscaping within the "Height Limitation Area" designated on Exhibit C of this Agreement shall be maintained by Pacific View at or below 430 feet elevation above mean sea level in such a way so as to preserve night light, water and mountain views from existing residences.

- e. Slopes.

- (1) Slopes within the Buffer Area behind Building Site G shall conform to the sections depicted in Exhibit E to this Agreement.

- (2) Slopes within the Buffer Area behind Building Site E adjacent to Lots 6, 7, and 8 shall conform to the sections depicted in Exhibit F to this Agreement.
- (3) Slopes behind the new Community Mausolea in Building Site H shall conform to the sections depicted in Exhibit F to this Development Agreement.
2. Height Limit. All structures shall comply with the 28/32-foot height limitation measured from the elevations set forth in Exhibit C of this Agreement. In addition, no structure or landscaping shall exceed 430 feet elevation mean sea level in the "Height Limitation Area" designated on Exhibit C of the Development Agreement.
3. Temporary Screening. All construction sites shall be screened from view from adjacent residential areas for the duration of construction activities to the extent reasonably feasible. Prior to issuance of any grading or building permit the Planning Department shall verify that appropriate screening requirements have been provided on the construction plans.
4. Mausoleum Design. All roofs, eaves and facias of new garden crypts and community mausolea shall be constructed of material, color, texture, thickness and pitch to blend with, and complement, the architectural style of the original structures within the park (e.g., Lagunita and Palm Courts). Blank walls of Community Mausolea in Building Sites E, G, and H shall be screened in accordance with the Final Landscape Plan.
5. Maintenance Of Developed/To Be Developed Areas. All landscaping currently installed, or to be installed, on the property shall be irrigated and maintained.
6. Maintenance of Undeveloped Areas. The undeveloped areas of the Property shall be maintained free and clear of trash and debris. Grass and weeds shall be mowed no less than semi-annually.
7. Reclaimed Water Connection. All existing and proposed irrigation systems shall be connected

to the City's reclaimed water system as soon as it is practical (i.e., when a reclaimed water connection is available at the property line) and economically feasible.

8. Light and Glare. The Building Director shall not issue any permit authorizing the installation of any lighting system unless the system is designed, directed and maintained to conceal the light source from, and to minimize light spillage and glare to, the adjacent residential uses to the extent reasonably feasible. The Building Director's determination of feasibility shall be based upon plans prepared and signed by a licensed architect or electrical engineer accompanied by a report explaining why any remaining glare or light spillage cannot feasibly be eliminated or further reduced.
9. Archaeological and Paleontological Resources. Prior to issuance of a grading permit, the applicant shall demonstrate to the Planning Department that the project will comply with Council Policies K-5 and K-6 regarding archaeological and paleontological resource investigation, surveillance and recovery.
10. Drilling and Engraving. All drilling and engraving of crypt markers shall be done in enclosed areas or at a sufficient distance from residential properties so as to cause no discernible increase (any increase in noise levels of 3 DBA or more shall be considered discernible) in ambient noise levels at any residential property line.

3.2 Use Permit No. 3518 Conditions.

1. Exhibit C depicts the approximate size, configuration and location of building envelopes for future Community Mausolea to be constructed within the Property. Community Mausoleum shall mean any mausoleum building or crypt wall structure containing interment spaces capable of accommodating casketed remains, and which are available to the public at large. Future Community Mausolea shall be permitted only in Building Sites A, C, E, G & H and within the Building Envelopes specified on the Technical Site Plan (Exhibit C).
2. The plan also depicts Building Sites within which Family Mausolea or Columbaria may be developed. "Family Mausolea" shall mean a

mausoleum building or above ground crypt containing casketed remains which are owned and privately used by any individual or family. Columbaria shall mean any building or structure used or intended to be used for the interment of cremated human remains. Pacific View's ability to construct Family Mausolea or Columbaria on the Property shall be limited as follows:

- a. Family Mausolea and Columbaria shall not exceed 12 feet in depth, 22 feet in width and 15 feet in height; provided, however, in Building Site G, Family Mausolea and Columbaria shall not exceed 14 feet in height.
 - b. Family Mausolea and Columbaria shall be permitted in Building Site D.
 - c. Family Mausolea and Columbaria shall be permitted in Building Sites F and G provided they are contiguous and adjacent to a Community Mausoleum and are located within the westerly projections of the Community Mausoleum (as opposed to crypt walls) building envelopes depicted on the Technical Site Plan (Exhibit C).
 - d. The Columbaria and related construction, including flag poles and flat work depicted on Exhibit I to this Agreement shall be permitted in the Garden of Valor subject to compliance with, and the payment of the penalty provided in, the Uniform Building Code. The improvements described in Exhibit I are the only improvements permitted in the Garden of Valor. Pacific View shall plant box trees to provide screening of Garden of Valor improvements from residences adjacent to the eastern and southern boundaries of the property.
 - e. Family Mausolea and Columbaria are prohibited on the Property except in those areas expressly permitted pursuant to this Section (3.2 a - c).
3. The General Plan Amendment and Technical Site Plan provides for a maximum of 30,000 square feet of administrative offices and support facilities, 121,680 square feet of Community Mausolea, and 12,000 square feet of Family Mausolea. Square footage for Columbaria, if

any, shall be deducted from Community or Family Mausolea allotments at Pacific View's option. The allotments described in this subsection include development on-site as of the date of this Agreement. As described in Section 4.1, overhangs, eaves, walkways, and similar architectural features and improvements shall not be counted against permitted square footage.

4. No roads or driveways shall be located closer to adjoining residential areas than depicted on the Technical Site Plan (Exhibit C). The existing extension of Pacific View Drive adjacent to the southerly side of Area 12 (contiguous and adjacent to the south side of Building Site F) shall be removed prior to the commencement of construction in Building Site G.
5. Except as provided in Section 4.8, the operation of all construction and maintenance equipment shall be in conformance with the provisions of Section 10.28.040 of the Newport Beach Municipal Code.
6. All improvements shall be constructed in accordance with all applicable city ordinances relating to grading and building code requirements, including any such requirements of the Public Works Department.
7. Prior to the issuance of any grading or building permits, Pacific View shall submit a hydraulic study for review and approval by the Public Works Director. Any modifications or extensions to the existing storm drain system shown to be required by the study shall be the responsibility of, and constructed by, Pacific View. Drainage facilities required of Pacific View must be approved by the Public Works Department and must be designed so as to not cause flooding of, or drainage of water onto, the adjacent City Reservoir Site.
8. The temporary building currently used as a sales office shall be allowed for a period of two (2) years from the Effective Date, unless otherwise extended by the Modifications Committee. At such time as the applicant's use of the temporary building ceases, the building shall be removed from the site.

9. Prior to the issuance of building permits for any Community Mausoleum, Family Mausoleum, Family Mausolea, or Columbaria, the location of such structures shall be reviewed with the Planning Director or his/her designee, to ensure compliance with the approved plans.
10. Minor Adjustments. Given the extended period of years over which the Property will be developed, it is understood that minor adjustments in the location or configuration of the Community Mausoleum, Family Mausolea or Columbaria may occur, and that other minor adjustments (e.g. to accommodate slope engineering or the engineering of building pads) may be necessary to address site considerations. Notwithstanding any other provision of the Discretionary Approvals or this Agreement, such minor adjustments shall be permitted with the approval of the Planning Director provided that they are substantially consistent with the building envelopes, and at or below the building height limits, shown on the Technical Site Plan (Exhibit C).

3.3 Site Plan Review Conditions.

That the proposed development shall be constructed in substantial accordance with the pad elevations specified in the Technical Site Plan (Exhibit C).

4. PUBLIC BENEFITS CONDITIONS. In addition to the conditions and mitigations in Section 3 of this Agreement, Pacific View has agreed to the following conditions and restrictions contained in this Section (4) in exchange for the vested rights conferred by this Agreement. Pacific View's agreement to implement and abide by the additional conditions specified in this Section (4) during the Term of this Agreement will confer substantial public benefits.

Specifically, Pacific's View's agreement to develop the Property in accordance with the following additional conditions will provide: (a) long-term certainty regarding Pacific View's development plans; (b) design controls over the cemetery which may not be otherwise available under Existing General Regulations and which are anticipated to result in the substantial screening of mausolea from the ground floor views of residences adjacent to the eastern and southern Property lines; (c) long-term development phasing which will reduce construction disturbances to nearby residences; (d) increased screening of, and roof treatment to, past development to improve its compatibility with nearby residences; (e) commitments with respect to improvement and maintenance of certain developed and undeveloped areas; and (f) release of potential monetary claims against the City of Newport Beach related to the

1988 General Plan Update (as set forth in Section 10 below) and subsequent acts or omissions of the City and its officers, employees and representatives prior to the Effective Date. To the extent of any inconsistency between the conditions set forth in this Section (4) and the conditions and mitigations contained in the Discretionary Approvals (as specified in Section (3)) the conditions specified in this Section (4) shall control.

1. Building Bulk. New Community Mausolea shall be constructed in compliance with the envelopes depicted in the Technical Site Plan (Exhibit C). The building envelopes do not depict the number or design of individual structures. In addition, the envelopes do not depict overhangs, eaves, walkways, and similar architectural features and improvements, which shall be constructed to screen Community Mausolea and are permitted to extend beyond the building envelopes shown in the Technical Site Plan (Exhibit C), provided, however eaves shall not exceed a depth of eight (8) feet and eaves on gable ends shall not exceed a depth of four (4) feet.
2. Building Height.
 - (a) Roof elevations of new Community Mausolea in Building Site G shall not exceed the heights indicated on Exhibit C.
 - (b) Pad elevations of new Community Mausolea in Building Site G shall comply with the pad elevations indicated on Exhibits C and E.
 - (c) Roof elevations of new Community Mausolea Building Site E shall not exceed the heights indicated on Exhibits C and F.
 - (d) Pad elevations of new Community Mausolea in Building Site E shall comply with the pad elevations indicated on Exhibits C and F.
 - (e) Roof elevations of new Community Mausolea in Building Site H shall not exceed the heights indicated on Exhibits C and F.
 - (f) Pad elevations of new Community Mausolea in Building Site H shall comply with the pad elevations indicated on Exhibits C and F.
3. Architectural Character. The architectural character, roof-treatment and finishes of new Community Mausolea shall be generally consistent

with the architectural character, roof treatment and finishes of the existing Lagunita and Palm Courts Community Mausoleum.

4. Increased Screening of Sunset Court. Within sixty days after the expiration of the Statute of Limitations for any challenge to this Agreement or the Discretionary Approvals, and assuming no legal challenge has been filed, Pacific View shall commence, and thereafter diligently pursue to completion, the following landscaping and roof treatment for the existing Sunset Court Community Mausolea:
 - a. Installation of thirty (30) fifteen-gallon shrubs to be added to the existing slopes surrounding the Sunset Court Community Mausoleum;
 - b. Ten (10) thirty-six inch box size trees shall be planted in the turf courtyard of the Sunset Court Addition (the trees selected shall be of a species not expected to exceed the 430 foot mean sea level height limitation restriction); and
 - c. The Sunset Court Addition roof will be enhanced with colored ornamental rock which complements the color of the structure.
5. Phasing. Pacific View may develop the Community Mausolea in Building Sites E, G, and H in one or more phases. For the purposes of this Agreement a "phase" shall mean the construction of one or more Community Mausolea structure(s) within one or more of the Building Envelopes shown on the Technical Site Plan (Exhibit C).

The first phase shall include the completion of Sunset Court within Building Site G (but may, in Pacific View's discretion, also include one or more additional Community Mausolea in Building Site G).

A minimum period of thirty (30) months shall be required to have elapsed between the completion of construction of any phase and the initiation of construction of any subsequent phase. Construction of each phase shall be completed within nine months of the commencement of construction.

Subject to the requirement that Pacific View commence the additional screening of Sunset Court required by Section 4.4 and issuance of

appropriate permits, construction of the first phase authorized by this Agreement may commence upon the Effective Date. The phasing requirements in this Agreement pertain exclusively to the grading and site preparation for, and construction of, new Community Mausolea and do not apply to any Family Mausolea, Columbaria or other improvement, structure, or appurtenance of the Property. The additional screening to Sunset Court required by Section 4.4 shall not be considered a "phase" for purposes of this Agreement.

6. Buffer Zone Grading and Landscaping. Pacific View shall commence study and analysis of the grading and landscaping for the Buffer area and Building Sites E & G within sixty days after expiration of the applicable Statute of Limitations, assuming no legal challenge has been filed to this Agreement or the Discretionary Approvals, and thereafter apply for all necessary permits. Grading for the Buffer Area and Building Sites E & G shall be completed within six (6) months after commencement of construction of the remainder of the Sunset Court Mausoleum in Building Site G. Pacific View shall also complete the installation of landscaping and irrigation systems in the entire Buffer Area as specified in the Final Landscape Plan within this six (6) month period. Pacific View shall be permitted to subsequently encroach into, remove a portion of or otherwise disturb Buffer Area landscaping and irrigation as specified in Section 3.1.1(B).

Within six (6) months of the Effective Date, Pacific View shall plant twenty-six (26) fifteen-gallon trees within Area 8 (as shown on Exhibit C and D) designated on Exhibit C hereto. Pacific View shall not commence the construction of any Community Mausolea in Building Site H prior to four (4) years after the planting of such trees; provided, however, that Pacific View may elect to commence construction sooner than four (4) years by increasing the box-size of such trees or replacing such trees with larger box sizes as follows:

Less than 3 years = 36" box
Less than 2 years = 48" box
Less than 1 year = 60" box

Within six (6) months of the Effective Date of this Agreement, Pacific View shall also plant five (5) twenty four inch box trees along the

northeasterly boundary of Building Site D as shown in the Preliminary Landscape Plan.

7. Offsite Landscaping. Provided that the conditions in this Section 4.7 are met, Pacific View shall reimburse the Spyglass Hill Homeowner Association's ("Association") the actual and reasonable cost of: (a) purchasing and planting forty (40) fifteen-gallon shrub/trees within the common homeowner's association landscape area along the southeast boundary of Building Site E; and (b) repairing the existing irrigation system in such area as necessary consistent with the original operating characteristics of such irrigation system.

Pacific View's obligation to reimburse the Association is contingent upon the Association's submittal of three bids consistent with the foregoing work description within six (6) months of the Effective Date of this Agreement. In the event the Association fails to submit the bids within the time required, Pacific View shall have no reimbursement obligation pursuant to this Section (4.7). Within ten (10) business days of receiving such bids, Pacific View shall approve one of the bids provided that all of the bids are consistent with such work description. The total cost set forth in the approved bid shall constitute Pacific View's maximum reimbursement obligation to Association regardless of whether Association accepts the bid approved by Pacific View; but in no event shall Pacific View be obligated to reimburse more than Association's actual cost of conducting such work. In the event that Association fails to complete the work described in this Section 4.7 within twelve (12) months of Pacific View's bid approval, Pacific View shall have no reimbursement obligation under this Section 4.7; however, in the event such work is completed within the time required, Pacific View shall promptly reimburse Association the amount provided herein.

8. Mausolea Construction Hours. Notwithstanding any other provision of the Discretionary Approvals, this Agreement, or the Existing General Regulations, Community and Family Mausolea construction activity shall not commence before 8:00 a.m. Monday through Saturday and no construction shall be permitted on Sundays or national holidays. Construction activity shall cease before 6:30 p.m. on weekdays and 6:00 p.m. on Saturday. These

restrictions shall not apply to any other aspect of Pacific View's operations.

9. 430' Covenant. In the event that all of those property owners who are the beneficiaries of the 430 foot mean sea level covenant of light and air which burdens a portion of the Property effectuate a legally enforceable extinguishment and release of such covenant, or in the event that all of such property owners effectuate a legally enforceable modification of such covenant to permit landscaping to exceed the 430 foot mean sea level elevation in the area burdened, then Pacific View shall not oppose and will consent to a modification of this Agreement initiated by the City for the sole and exclusive purpose of allowing the landscaping which is presently restricted to the 430 foot mean sea level elevation by virtue of this Agreement to grow to such greater elevation as permitted by the covenant modification agreed to by all of the benefitted property homeowners.

Notwithstanding the foregoing, Pacific View shall be under no obligation whatsoever to seek or procure the consent of any property owner to the extinguishment or modification of the covenant, or to incur any cost or expense to obtain any required consent. Further, Pacific View shall be under no obligation whatsoever to consent to any modification of this Agreement consistent with any extinguishment or modification unless: (a) such extinguishment or modification (including, but not limited to a modification of the Development Agreement) does not seek to impose any additional conditions, obligations, restrictions, costs and/or expenses upon Pacific View other than to allow the landscaping in the burdened area of Pacific View ownership's to grow to such greater elevation as permitted by the covenant modification agreed to by all of the benefitted property owners and thereafter be maintained at such elevation; and (b) Pacific View is able to obtain an updated policy of title insurance or an endorsement to its existing policy insuring Pacific View's title consistent with the extinguished or modified covenant, and consistent with the modified Development Agreement.

10.

Ground Burial

(a) Building Site E

Except for the Community Mausoleum and Crypt Wall, Pacific View is permitted only below ground interment and the installation of plaques or memorials at or below grade in Building Site E. Pacific View shall not install pillow blocks, benches, memorials or other above grade objects (exclusive of landscaping as provided in the Final Landscape Plan and trash receptacles only as necessary).

(b) Building Sites (other than Building Site E)

Those portions of Building Sites which do not consist of building envelopes, or within which Family Mausolea or Columbaria are not permitted by this Agreement, or if permitted, the Family Mausolea or Columbaria are not constructed, shall be used only for ground burial provided Pacific View may install in such areas:

- (1) Aesthetically pleasing walls not exceeding three (3) feet in height measured from the highest adjacent finished grade;
- (2) Above grade memorials such as benches and pillow blocks, provided the memorial does not exceed three (3) feet in height;
- (3) Gardens and Landscaping;
- (4) Complementary memorials and related architectural features which do not contain human remains and which do not exceed eight feet in height (measured from grade) subject to Building Code compliance.

c. Ground Burial Outside of Building Sites

(1) Developed Areas (Areas 1-10)

Those portions of the Property currently developed with ground burials (Areas 1-10 on the Technical Site Plan - Exhibit C shall be maintained in a manner consistent

with a lawn cemetery to preserve the existing "park like" environment of the Property.

(2) Undeveloped Areas (Area 11)

Area 11 as shown on the Technical Site Plan may be developed in a manner complementary to the existing improvements in that portion of Area 1 between San Joaquin Hills Road and Vista Del Mar Drive and between Building Sites C and D.

5. VESTED RIGHT TO DEVELOP.

- 5.1 Compliance with Existing General Regulations. Pacific View is required to comply with the Existing General Regulations. City acknowledges and agrees that the Discretionary Approvals constitute all of the discretionary entitlements, approvals and permits required by the City for Pacific View to complete the full extent of development envisioned by the Technical Site Plan and Discretionary Approvals, and that the conditions and mitigation measures set forth in Section 3 and 4 constitute all of the conditions and mitigations to be imposed by the City in association therewith in the exercise of its discretionary authority under the Existing General Regulations.

Subject to Pacific View's compliance with this Agreement, City shall process and approve applications for Project Specific Approvals consistent with the Discretionary Approvals and this Agreement in a timely manner without the imposition of additional conditions other than standard conditions and fees which are: (a) not in conflict with this Agreement; and (b) which are routinely imposed or assessed in conjunction with non-discretionary permits and approvals. As to those Existing General Regulations which require the payment of fees, costs, and expenses, Pacific View shall pay the fee, cost, or expense required as of the date on which Pacific View submits the application for Project Specific Approval.

City acknowledges and agrees that no development impact fees (including, but not limited to, traffic impact fees but excluding building permit fees, plan check fees or other fees for services) shall be required in connection with any development authorized by this Agreement or any use of the property that is not inconsistent

with this Agreement. Except as expressly provided in this Agreement, no dedications or reservations of the Property shall be required of Pacific View in conjunction with the application or issuance of any Project Specific Approvals. Pacific View shall also comply with all provisions of the Uniform Building Code, whether adopted before or after the Approval Date, which are in effect at the time applications for Project Specific Approvals are submitted. Except as provided in this section (5.1), Pacific View shall not be obligated to comply with Future General Regulations, except as expressly required (as opposed to permitted) by state or federal law.

5.2 Vested Right to Develop. During the Term of this Agreement, Pacific View shall have a contractual and statutory vested right to develop the Property to the full extent permitted by this Agreement and the Discretionary Approvals and to receive all Project Specific Approvals to alter, improve and develop the Property in accordance therewith. Subject to the provisions of Sections 3 and 4 of this Agreement, City shall only take action which complies and is consistent with this Agreement unless Pacific View otherwise delivers prior written consent to the City. Subject to the limitations on development hereunder, nothing in this Agreement is intended to limit the interment activities conducted by Pacific View. Nothing in this Agreement shall restrict Pacific View's right to perform ground interments anywhere within the Property, except within the Buffer Area, or, unless expressly restricted by this Agreement, to develop and use the Property in any manner consistent with the Existing General Regulations.

5.3 Conflicting Measures. Except as required by statutory or decisional law, the City shall not apply or enforce, as to the Property, any ordinance or initiative (including, any ordinance adopted pursuant to Health and Safety Code Section 8115), moratorium, referendum, resolution, statute, regulation, policy or other provision of law which in any way delay, limits, or restricts development of the Property to the full extent permitted by this Agreement.

5.4 Justifiable Reliance. City acknowledges that in reasonable and justifiable reliance upon City's representations and commitments herein (in addition to City's contractual commitments

hereunder and the provisions of the Development Agreement Act) to permit Pacific View's completion of the development in accordance with the Technical Site Plan (Exhibit C) in accordance with the terms and conditions set forth in this Agreement, Pacific View: (a) has invested, and will invest substantial sums of money and planning effort in developing the Property in accordance with the Technical Plan (Exhibit C); and (b) has agreed to change the land use entitlements for the Property, which enable the Property to be developed in accordance with the Technical Site Plan (Exhibit C) to be developed, but which preclude other and profitable uses that Pacific View contends would be permissible in the absence of the contractual commitments contained in this Agreement.

5.5 Construction Timing. Subject to the provisions of this Agreement and the Discretionary Approvals, Pacific View shall have the right to decide the timing, phasing, and sequencing of construction and development on the Property in its sole and absolute discretion. Pacific View shall be entitled to apply for, and receive approval of, Project Specific Approvals in a timely manner by the City. Nothing in this Agreement shall require Pacific View to complete any or all of the development authorized by the Discretionary Approvals and this Agreement within the Term of this Agreement.

5.6 Existing Mausoleum Complex in Building Site F. Nothing in the Discretionary Approvals or this Development Agreement shall effect the right of Pacific View to maintain, and in the event of damage or destruction (whether partial or complete), to repair and/or replace the existing mausoleum structures and other improvements located in Building Site F.

6. PERIODIC REVIEW.

6.1 City and Pacific View Responsibilities. Without limiting the right of the City to set a public hearing in accordance with Section 9, at least every twelve (12) months during the Term of this Agreement, the City shall review Pacific View's good faith substantial compliance with this Agreement (the "Periodic Review"). After the Periodic Review, the City's finding of good faith compliance by Pacific View shall be conclusive for the purposes of future Periodic Reviews or legal action between the Parties. Either Party may address any requirements of the

Agreement during the Periodic Review. However, fifteen (15) days' written Notice of any requirement which one Party intends to address shall be provided to the other Party. If, at the time of the review, an issue not previously identified in writing is addressed or is required to be addressed, then the review shall be continued at the request of either Party for a period of no more than 60 days to afford sufficient time for analysis and preparation of a response.

- 6.2 Public Hearing. The Periodic Review shall be conducted at a public hearing noticed in accordance with the provisions of Chapter 15.45 of the Newport Beach Municipal Code.
- 6.3 Information to be Provided to Pacific View. The City shall mail to Pacific View a copy of the staff report and related exhibits concerning compliance with this Agreement a minimum of ten (10) days before the Periodic Review.
- 6.4 Mitigation Review. The periodic review shall include a report prepared by the Planning Director regarding Pacific View's compliance with the various conditions and mitigation measures contained within the mitigation monitoring plan adopted in connection with the Negative Declaration. Pacific View shall be found in compliance with this Agreement and the Mitigation Monitoring Plan unless the City Council determines, based upon substantial evidence presented at the Periodic Review, that Pacific View has not complied with one, or more, of the mitigation measures or the terms or conditions of this Agreement.
- 6.5 Estoppel Certificate. Either Party may at any time deliver written Notice to the other Party requesting an estoppel certificate (the "Estoppel Certificate") stating:
- (a) The Agreement is in full force and effect and is a binding obligation of the Parties.
 - (b) The Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments.
 - (c) The non-requesting party has no knowledge of any default in the performance of the requesting party's obligations under the Agreement or, if a Default does exist, the nature and amount of any Default.

A Party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting Party within thirty (30) days after receipt of the request. The Planning Director may sign Estoppel Certificates on behalf of the city. An Estoppel Certificate may be relied on by assignees and Mortgagees. The Estoppel Certificate shall be substantially in the same form as Exhibit G.

- 6.6 Failure to Conduct Periodic Review. The City's failure to conduct a Periodic Review shall not constitute or be asserted by the City as Pacific View's Default, or asserted by Pacific View as a waiver of a Pacific View Default.

7. GENERAL PROVISIONS.

- 7.1 Effective Date. This Agreement and the obligations of the Parties shall be effective as of the Effective Date. However, this Agreement shall bind the Parties as of the Approval Date, subject only to the Adopting Ordinance becoming effective pursuant to California law and/or the Newport Beach City Charter.
- 7.2 Term of Agreement. The term of this Agreement (the "Term") shall begin on the Effective Date and continue for twenty (20) years unless otherwise terminated or modified pursuant to this Agreement (including, but not limited to, the extension provisions of Section 11.16 hereof). In addition, the term of this Agreement shall be automatically extended for an additional ten (10) year term if, at the expiration of the initial twenty (20) year term, Pacific View has not completed all of the development authorized by this Agreement.
- 7.3 Assignment. Pacific View has the absolute right to assign its rights and obligations under this Agreement as part of an assignment or transfer of all of the Property.
- 7.4 Amendment of Agreement. This Agreement may be amended from time to time by the written mutual consent of the Parties, or their successors in interest, but only at a noticed public hearing and in the manner provided by the Government Code and this Agreement.
- 7.5 Enforcement. This Agreement is enforceable by each of the Parties and their respective successors and assigns.

7.6 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

- (a) Expiration of the twenty (20) year term (including any extension pursuant to Section 7.2 hereof);
- (b) Entry, after all appeals have been exhausted, of a final judgment or issuance of a final order by a court of competent jurisdiction directing the City to set aside, withdraw, or abrogate the City's approval of this Agreement, or any of the Discretionary Approvals, unless otherwise authorized or permitted by the court, or,
- (c) The effective date of a Party's election to terminate the Agreement as provided in Section 9.3 of this Agreement; provided that the validity of the same is upheld by final and non-appealable judicial review.

7.7 Effect of Termination. In no event shall this Agreement be construed to limit Pacific View's right to continue to develop and utilize the Property, or construed to create any contractual or statutory vested right (as opposed to common law vested rights) to continue to develop and utilize the Property, subsequent to the termination of this Agreement (whether voluntary, involuntary, or by operation of this Agreement) subject to compliance with the Discretionary Approvals. However, to the extent Pacific View has completed the development envisioned by the Discretionary Approvals and this Agreement in any particular Building Site designated by the Technical Site Plan (Exhibit C), the conditions and restrictions of this Agreement relating to such Building Site shall survive the termination of this Agreement and Pacific View shall continue to be obligated to maintain the Buffer Area pursuant to the restrictive covenant (Exhibit 3.1.1(B)).

8. CONFLICTS OF LAW.

8.1 Conflict with State and Federal Laws and Regulations. Where state or federal laws or regulations prevent compliance with one or more provisions of this Agreement, those provisions shall be modified, through revision or suspension, to the extent necessary to comply with such state or federal laws or regulations

and the modified Agreement shall remain in effect, subject to the following:

- (a) the City shall not request modification of this Agreement pursuant to this provision unless and until the City Council makes a finding that such modification is required (as opposed to permitted) by state and federal laws or regulations;
- (b) the modifications must be limited to those required (as opposed to permitted) by the state or federal laws;
- (c) the modified Agreement must be consistent with the state or federal laws or regulations which required modification or suspension;
- (d) the intended material benefits of this Agreement must still be received by each of the Parties after modification;
- (e) neither the modification nor any applicable local, state, or federal laws or regulations, may render the modified Agreement impractical to enforce; and
- (f) Pacific View consents in writing to the modification.

Pacific View shall have the right to seek judicial review of any proposed modification to ensure compliance with this Section.

9. DEFAULT, REMEDIES AND TERMINATION.

9.1 General Provisions. In the event of a Default, the Party alleging a Default shall give the other Party a written Notice of Default. The Notice of Default shall specify the nature of the alleged Default, and a reasonable manner and sufficient period of time (not less than thirty (30) days) in which the Default must be cured (the "Cure Period"). During the Cure Period, the Party charged shall not be considered in Default for the purposes of termination of the Agreement or institution of legal proceedings. If the alleged Default is cured within the Cure Period, then a Default shall be deemed not to exist.

9.2 Option to Institute Legal Proceedings or to Terminate. If an alleged Default is not cured within the Cure Period, the noticing Party must

give the defaulting Party a Notice of intent to terminate the Agreement. Within thirty (30) days after giving of the Notice, the City Council shall hold a public hearing in the manner set forth in Government Code Sections 65865, 65867, and 65868, as amended, to consider and review the matter.

- 9.3 Notice of Termination. After considering the evidence presented to the City Council, the Party alleging the Default, at its option, may give written Notice of termination of the Agreement to the other Party and the Agreement shall be terminated immediately upon giving the Notice. A termination shall be valid only if good cause exists and substantial evidence was presented to the City Council to establish the existence of a Default. The findings of the City Council as to the existence of a Default shall have no weight in any legal proceeding brought to determine the existence of a Default. The validity of any termination may be challenged pursuant to Section 11.15, in which case the court shall render an independent judgment as to the existence of a Default and good cause for termination. Termination may result only from a material Default of a material provision of this Agreement.
- 9.4 Waiver. Failure or delay in giving Notice of Default shall not waive a Party's right to give future Notice of the same or any other Default.
- 9.5 Default by Pacific View. Subject to compliance with Sections 9.1 through 9.3, in the event of a Pacific View default, City shall have no obligation to perform any of City's obligations pursuant to this Agreement (as opposed to the City's obligations pursuant to Discretionary Approvals). Upon a Pacific View default, any resulting delays in City's performance shall neither be City's default nor constitute grounds for termination or cancellation of the Agreement by Pacific View.
- 9.6 Default by the City. Subject to compliance with Sections 9.1 through 9.3, in the event of a City Default, Pacific View, without limiting any of its other remedies, shall not be obligated to proceed with this Agreement or complete the development envisioned thereby, nor to perform any further obligations under the Agreement. Upon a City Default, any resulting delays in Pacific View's performance shall neither be Pacific View's Default nor constitute grounds

for termination or cancellation of the Agreement by the City.

- 9.7 Availability of Specific Performance. Both parties agree and recognize that it will not be possible to restore the land use entitlements for the Property to their state prior to this Agreement's approval, and that it will not be physically, financially, or practically possible as a matter of land use planning to restore the Property to its prior state once the Project is commenced. For these reasons, it may not be possible to determine an amount of monetary damages which would adequately compensate Pacific View in the event Pacific View is prevented from completing the development envisioned by the Technical Site Plan (Exhibit C) in accordance with the terms and conditions of this Agreement. Therefore, without limiting any remedy available to Pacific View because of a City Default, the parties agree that: (a) monetary damages would not be an adequate remedy for Pacific View if Pacific View is prevented from completing the development envisioned by the Discretionary Approvals, the Technical Site Plan (Exhibit C) and in accordance with the terms and conditions hereof; and (b) that specific performance and/or injunctive relief shall be available to Pacific View to enforce City's obligations hereunder.

Similarly, the City has relied on Pacific View's obligations pursuant to this Agreement in granting approval of the Technical Site Plan (Exhibit C) and Discretionary Approvals. It will not be possible to determine an amount of monetary damages which would adequately compensate the City in the event of a Pacific View Default. Therefore, without limiting any remedy available to the City because of a Pacific View Default, the parties agree that: (a) monetary damages would not be an adequate remedy for the City in the event of a Pacific View Default; and (b) that specific performance and/or injunctive relief shall be available to City to enforce Pacific View's obligations hereunder.

10. GENERAL RELEASE. In consideration of the terms and provisions of this Development Agreement, City and Pacific View agree that upon the Effective Date of this Agreement, Pacific View shall, and hereby does, forever relieve, release, and discharge City of and from any and all known or unknown, suspected or unsuspected, contingent or fixed, and existing or potential claims, complaints, grievances,

allegations, demands, liabilities, losses, obligations, damages, costs, expenses (including, without limitation, attorneys' fees), lawsuits, actions (in law, equity, or otherwise), causes of action and disputes (collectively, "Claims") that arise out of, or are in any way related, to any act or omission by any City official, employee, representative or agent at any time prior to the Effective Date of this Agreement.

Pacific View expressly understands that California Civil Code Section 1542 ("Section 1542") provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Pacific View knowingly, voluntarily, intentionally, and expressly waives any and all rights and benefits conferred by Section 1542 or any law of any state or territory of the United States or any foreign country, principle of common law, or other law that is similar to Section 1542, and agree and acknowledge that this waiver is an essential term of this Agreement, without which the consideration given herein would not have been given.

Notwithstanding the foregoing general release, nothing in the Discretionary Approvals, this Agreement, Pacific View's consent to this Agreement, or Pacific View's acquiescence in the Discretionary Approvals, shall be construed as any admission or agreement on the part of Pacific View that, in the absence of Pacific View's voluntary agreement to this Development Agreement, the City had any legal authority to limit the development of mausolea at Pacific View, withhold building Permits from Pacific View, or otherwise impose additional regulatory burdens upon Pacific View's operations and development of the cemetery under the use permit issued by the County of Orange.

Notwithstanding the foregoing, nothing in this Agreement shall be construed as any admission or agreement on the part of the City that any act, or any failure to act, on the part of the City or any of its officials, officers, employees, or representatives was contrary to, or inconsistent with, any provision of law, ordinance, resolution or policy or would subject the City to any liability or adverse court ruling.

11. MISCELLANEOUS PROVISIONS.

- 11.1 Notices. All Notices shall be written and delivered by personal delivery (including Federal Express and other commercial express

delivery services providing acknowledgments or receipt), registered, certified, or express mail, or telegram to the addresses set forth below. Receipt shall be deemed complete as follows:

- (a) For personal delivery, upon actual receipt;
- (b) For registered, certified, or express mail, upon the delivery date or attempted delivery date as shown on the return receipt; and
- (c) For telegram, upon the transmission of the telegram.

Notices shall be addressed as follows:

To the City:	City Clerk City of Newport Beach 3300 Newport Boulevard Newport Beach, CA 92660
With a copy to:	The City Attorney
With a copy to:	The City Manager
To Pacific View:	Pacific View Memorial Park 3500 Pacific View Drive Newport Beach, CA 92663 Attention: Mr. Steve Schacht
With a copy to:	Allan J. Abshez, Esq. Irell & Manella 1880 Avenue of the Stars, Suite 900 Los Angeles, CA 90067-4276

The addresses to which Notices shall be sent may be changed by giving Notice of a new address.

- 11.2 Force Majeure; Extension of Time of Performance. Neither Party shall be deemed to be in Default where delays or nonperformance are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, oil spills, casualties, acts of nature, unavailability of materials, governmental restrictions imposed or mandated by governmental entities, or similar bases for excused performance. If written Notice of such delay is given to the other Party within thirty (30) days after such delay begins an extension of time for performance shall be granted in writing for the period of the delay, or longer

as may be mutually agreed upon. Delays and extensions associated with litigation shall be governed by Section 11.16 hereof.

- 11.3 Severability. If any material part of the Agreement is found by a court to be invalid, void, or illegal, the Parties shall modify the Agreement to implement the original intent of the Parties. These steps may include the waiver by either of the Parties of their right under the unenforceable provision. If, however, the Agreement objectively cannot be modified to implement the original intent of the Parties and the Party substantially benefitted by the material provision does not waive its rights under the unenforceable provision, the entire Agreement shall become void. For purposes of this Section, and without excluding the possible materiality of other provisions of this Agreement, all provisions of Sections 3, 4 and 5 are deemed "material."
- 11.4 Entire Agreement. This Agreement constitutes the entire understanding and Agreement of the Parties regarding the subject matter of this Agreement. This Agreement supersedes all negotiations and previous agreements between the Parties regarding that subject matter.
- 11.5 Waivers. All waivers of the provisions of this Agreement must be in writing and signed by the Party making the waiver.
- 11.6 Covenant of Good Faith and Fair Dealing. Neither Party shall do anything which shall have the effect of harming or injuring the right of the other Party to receive the benefits of this Agreement.
- 11.7 Further Actions and Instruments. Upon the request of either Party, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.
- 11.8 Successors and Assigns. The burdens of this Agreement shall be binding upon, and the benefits of the Agreement shall inure to, all successors-in-interest and assigns of the Parties; provided, however, that in no event shall the obligations of Pacific View hereunder

be deemed to inure to the benefit of, or bind, any member of the general public that has purchased or holds title to any interment space at the Property. Further, this Agreement is made exclusively by and between the City and Pacific View, and notwithstanding any provision hereof (including, but not limited to, Section 4.7 and references to off-site properties), it is the intent of the parties that there are no third party beneficiaries to this Agreement; and no provision of this Agreement shall confer any enforcement rights upon any party other than Pacific View and the City. The parties also acknowledge and agree that, consistent with general legal principles, this Agreement does not effect or alter the legal rights of any person or entity not a party to the Agreement.

- 11.9 Construction of Agreement. This Agreement has been the subject of extensive negotiations between the parties and therefore no presumption for or against any party arising out of drafting all or any part of this Agreement will be applied in any action relating to, connected with or involving this Agreement. All language in all parts of this Agreement shall be construed as a whole and given its fair meaning. The captions of the paragraphs and subparagraphs are for convenience only and shall not be considered or referred to in resolving questions of construction. This Agreement shall be governed by the laws of the State of California. This Agreement is not intended to impermissibly contract away the legislative and governmental functions of the City, and in particular, the City's police powers or to surrender or abrogate the city's governmental powers over the Property.
- 11.10 Authority to Execute. The person executing this Agreement on behalf of Pacific View warrants and represents that he/she has the authority to do so and the authority to bind Pacific View to the performance of Pacific View's obligations under this Agreement.
- 11.11 Consent. Any consent required by the Parties in carrying out the terms of this Agreement shall not unreasonably be withheld.
- 11.12 Effect on Title. Subject to the requirement that Pacific View record a covenant as specified in Section 3.1.1(B), this Agreement shall not continue as an encumbrance against any portion

of the Property as to which this Agreement has terminated.

- 11.13 Recording. The City Clerk shall cause a copy of this Agreement to be executed by the City and submit the same for recordation in the Official Records of Orange County no later than ten (10) days after the Effective Date. The recordation of this Agreement is deemed a ministerial act and the failure of the City to record the Agreement as required by this Section and Government Code Section 65868.5 does not make the Agreement void or ineffective.
- 11.14 Institution of Legal Action. In addition to any other rights or remedies, either Party may institute legal action to cure, correct, or remedy any Default, to enforce any provision of this Agreement, to enjoin any threatened or attempted violation of this Agreement, to recover damages for any Default, or to obtain any remedies consistent with the purpose of this Agreement. Legal actions may be instituted in the Superior Court of the County of Orange, State of California, or in the Federal District Court in the Central District of California.
- 11.15 Attorneys' Fees. In any arbitration, quasi-judicial, administrative, or judicial proceeding between the Parties initiated with respect to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all costs, expenses, and disbursements in connection with such action.
- 11.16 Conditions Precedent to Effectiveness. In the event this Agreement or any of the Discretionary Approvals are overturned or ruled invalid by a final non-appealable judgment of court of competent jurisdiction, then all of Pacific View's obligations hereunder (including, but not limited to, Pacific View's obligations under Sections 4.7 and 10 hereof) shall be deemed null, void, and of no effect whatsoever. Further, notwithstanding any other provision of this Agreement, during any pending litigation filed to challenge, review, enjoin, set-aside, modify, or overturn the Technical Site Plan, the Discretionary Approvals, Development Agreement, environmental review in connection therewith, or any of the rights of the Parties pursuant thereto, all of Pacific View's obligations hereunder (including, but not limited to, Pacific View's obligations under Sections 4.7 and 10 hereof) shall be suspended and tolled;

provided, however, that if Pacific View elects to go forward under the Discretionary Approvals and this Agreement during any pending litigation, then notwithstanding such litigation, the City shall cooperate and process and issue all Project Specific Approvals requested by Pacific View hereunder provided that Pacific View complies with the provisions of the Discretionary Approvals and this Agreement. At Pacific View's request, the period of any litigation not initiated by Pacific View (including all appeals) shall be added to the term of this Agreement.

Date: 8/25, 1995

CITY OF NEWPORT BEACH

By: [Signature]
John Hedges, Mayor

Date: 8/25, 1995

PACIFIC VIEW MEMORIAL PARK

By: [Signature]
Stephen L. Schacht
General Manager

wb\agr\pacview.agt
24 August 1995

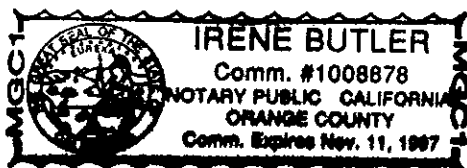
State of California

County of Orange

On August 25, 1995 before me, Irene Butler, Notary Public,

personally appeared John W. Hedges, Mayor and Stephen L. Schacht,

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he/she~~ they executed the same in ~~his/her~~ their authorized capacity(ies), and that by ~~his/her~~ their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Irene Butler

CAPACITY CLAIMED BY SIGNER(S)

☐ Individual
☒ Corporate Officer (Schacht for Pacific View)
☐ Limited Partner
☐ General Partner
☐ Attorney-in-Fact
☐ Trustee(s)
☐ Guardian/Conservator
Mayor Other: John W. Hedges

DESCRIPTION OF ATTACHED DOCUMENT

Development Agreement btw
City of Newport Beach & Pacific
View Memorial Park

Title or Type of Document

Number of Pages

August 25, 1995

Date of Document

Signer Is Representing:
City of Newport Beach as Mayor

N/A

Signer(s) Other Than Named Above

Recording Requested By and
When Recorded Return to:

City Clerk
City of Newport Beach
3300 Newport Boulevard
P. O. Box 1768
Newport Beach, CA 92659-1768

RECEIVED

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

2007 JUL 16

NO FEE

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Fee Exempt - Gov't Code §6103

(Space above for Recorder's Use)

**FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT NO. 7**

**BETWEEN
THE CITY OF NEWPORT BEACH
AND
PACIFIC VIEW MEMORIAL PARK**

Approved September 25, 2007

Ordinance No. 2007-15

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT NO. 7

(Pacific View)

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT NO. 7 is made and entered into effective as of October 25, 2007 by and among the CITY OF NEWPORT BEACH, a charter city and a municipal corporation organized and existing under the laws of the State of California (the "City"), and SCI CALIFORNIA FUNERAL SERVICES, INC. doing business as PACIFIC VIEW MEMORIAL PARK ("Pacific View"), successor-in-interest to PIERCE BROTHERS, a California corporation, with reference to the following facts and intentions:

RECITALS

A. Pacific View is the owner of approximately forty-five (45) acres of real property located at 3500 Pacific View Drive in the City bounded by residential uses to the north and east, San Joaquin Hills Road to the south, and Big Canyon Reservoir and Harbor Day School to the west (the "Property").

B. On July 10, 1995, the Newport Beach City Council certified a Negative Declaration, approved certain land use entitlement permits for development of the Property, including Use Permit No. 3518, and adopted Ordinance No. 95-26 approving Development Agreement No. 7 between the City and Pierce Brothers, a California corporation doing business as Pacific View Memorial Park, recorded in the Official Records of Orange County, California on September 8, 1995 as Instrument No. 95-0392537 (the "Development Agreement"). The Development Agreement grants to Pacific View statutory vested rights to develop the Property in accordance with the terms, conditions and exhibits contained in the Development Agreement.

C. Pursuant to the provisions of the General Corporation Law of the State of California and by Certificate of Ownership dated December 31, 2001, filed in the office of the Secretary of State of the State of California, SCI California Funeral Services, Inc. acquired all of the outstanding shares of Pierce Brothers and merged Pierce Brothers into SCI California Funeral Services, Inc. to become effective on December 31, 2001. Under the terms of the Certificate of Ownership, Pierce Brothers was determined to be the disappearing corporation and SCI California Funeral Services, Inc. continued in existence as the surviving corporation.

D. Pacific View is proposing to amend Use Permit No. 3518 by Use Permit No. 2006-040 (the "Use Permit Amendment") and amend Development Agreement No. 7 by Development Agreement No. 2006-001 (the "First Amendment") and make appropriate changes to the Technical Site Plan, Preliminary Landscape Plan and Section Diagram through Building Sites E and H attached to the Development Agreement as Exhibits "C," "D" and "F," to remove a 7,200 square foot Community Mausoleum in Building Site H, Area 8 and replace it with a maximum of six (6) Family Mausolea having a total of 2024 square feet and ground burial terraced garden estates (as governed by the restrictions in Section 4(10)(b) of the Development Agreement) and associated landscape planting to the rear and around the Family Mausolea to buffer each structure from views of residents in the surrounding community. The Use Permit Amendment will establish the maximum allowable size of the Family Mausolea structures at 17 feet in height, 22 feet in width and 17 feet in depth, for four (4) Family Mausolea for Building

Envelopes H.1, H.2, H.3 and H.4 and two (2) Family Mausolea with a maximum of 15 feet in height, 22 feet in width and 12 feet in depth for Building Envelopes H.5 and H.6 to be located within Building Site H, Area 8.

E. After giving appropriate notice, the City Planning Commission held a public hearing to consider the First Amendment on August 9, 2007 and voted to recommend approval of the same.

F. After a duly noticed public hearing, the City Council approved execution of this First Amendment pursuant to Ordinance No. 2007-15, adopted on September 25, 2007.

G. This First Amendment is consistent with the City's General Plan and associated amendments, and other applicable ordinances, plans and policies of the City. This First Amendment is also consistent with the purpose and intent of the provisions of Section 65864 et seq. of the California Government Code, and Chapter 15.45 of the Newport Beach Municipal Code.

H. An initial study has been prepared for the Use Permit Amendment and this First Amendment, which determined that the changes proposed in the Use Permit Amendment and this First Amendment would not have a significant impact on the environment. Therefore, a Negative Declaration has been prepared for the Use Permit Amendment and this First Amendment, which is consistent with the California Environmental Quality Act and was certified by the City Council on September 11, 2007.

I. Based on the foregoing and subject to the terms and conditions set forth herein, City and Pacific View desire to enter into this First Amendment to Development Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, and having determined that the foregoing recitals are true and correct and should be and hereby are incorporated into this First Amendment, Pacific View and the City agree as follows:

AGREEMENT

1. Section 1.4 of the Development Agreement entitled *Development of the Property* is hereby amended to read as follows:

1.4 Development of the Property. This Agreement grants Pacific View the statutory and contractual vested right to develop the Property during the Term of this Agreement, as extended by the First Amendment, consistent with Pacific View Memorial Park's Technical Site Plan attached as Exhibit "C", as amended, subject to compliance with the conditions and mitigation measures set forth in Section 3 with respect to the Discretionary Approvals as defined in Section 2.11 of the Development Agreement, as amended, as well as the additional conditions relating to public benefit set forth in Section 4 and other portions of the Development Agreement, as amended.

2. Section 1.5 of the Development Agreement entitled *Planning Commission/City Council Hearings* is hereby amended to add the following paragraph at the end of Section 1.5:

After giving appropriate notice, the Planning Commission held a public hearing to consider the First Amendment on August 9, 2007 and voted to recommend approval of the same. After a duly noticed public hearing, the City Council approved execution of the First Amendment pursuant to Ordinance No. 2007-15, adopted on September 25, 2007.

3. Section 1.8 of the Development Agreement entitled *City Ordinance* is hereby amended to add the following sentence:

On September 25, 2007, the City Council adopted Ordinance No. 2007-15 approving the First Amendment and authorizing the City Council to enter into the First Amendment. The Adopting Ordinance will become effective on October 25, 2007.

4. Section 2.1 of the Development Agreement entitled *Adopting Ordinance* is hereby amended to read as follows:

2.1 The "Adopting Ordinance" refers to City Ordinance No. 95-26, adopted on July 10, 1995 by the City Council, which approved and authorized the City to enter into this Agreement. With respect to the First Amendment, the "First Amendment Adopting Ordinance" refers to City Ordinance No. 2007-15 adopted on September 25, 2007 by the City Council, which approved and authorized the City to enter into the First Amendment.

5. Section 2.2 of the Development Agreement entitled *Agreement* is hereby amended to read as follows:

2.2 "Agreement" refers to this Development Agreement No. 7 between the City and Pacific View, approved by the City Council on July 10, 1995. The "First Amendment Agreement" refers to this First Amendment to Development Agreement No. 7, approved by the City Council on September 25, 2007.

6. Section 2.4 of the Development Agreement entitled *Approval Date* is hereby amended to read as follows:

The "Approval Date" for purposes of the Development Agreement means the date on which the City Council voted to adopt the Adopting Ordinance approving Development Agreement No. 7. The "First Amendment Approval Date" refers to the date on which the City Council voted to adopt the Adopting Ordinance approving the First Amendment.

7. Section 2.11 of the Development Agreement entitled *Discretionary Approvals* is hereby amended to read as follows:

"Discretionary Approvals" shall collectively mean as follows: with respect to the approvals granted in 1995, the Negative Declaration certified on July 10, 1995, General Plan Amendment No. 94-1(F), Use Permit No. 3518, Development Agreement No. 7, and Site Plan Review No. 69, and with respect to the 2007 approvals, the Use Permit No. 2006-040, Development Agreement No. 2006-001, and Negative Declaration No. 2007-01.

8. Section 2.12 of the Development Agreement entitled *Effective Date* is hereby amended to read as follows:

2.12 The "Effective Date" for purposes of the Development Agreement means the effective date of the Adopting Ordinance approving the Development Agreement. The "First Amendment Effective Date" for purposes of the First Amendment means the effective date of the Adopting Ordinance approving the First Amendment.

9. Section 2.14 of the Development Agreement is hereby amended to read as follows:

An "Exhibit" refers to an Exhibit to the Development Agreement and the First Amendment. All Exhibits are incorporated as a substantive part of the Development Agreement and First Amendment. The Exhibits to the Development Agreement and First Amendment are:

- Exhibit A: Legal Description of Property
- Exhibit B: Map of Property
- Exhibit C: The Technical Site Plan dated July 10, 1995, as amended and dated on July 27, 2007.
- Exhibit D: Preliminary Landscape Plan dated July 10, 1995, as amended and dated on July 27, 2007.
- Exhibit E: Building Site G Section Diagrams dated July 10, 1995. Reference points: Lots 19, 21, 23 & 28)
- Exhibit F: Building Site E & H Section Diagram dated July 10, 1995, as amended and dated on July 27, 2007. (Reference point: Lot 7)
- Exhibit G: Estoppel Certificate
- Exhibit H: Restrictive Covenant
- Exhibit I: Garden of Valor Improvement Plans dated July 10, 1995.

Exhibit J: Computer Visual Simulations dated July 10, 2007.

10. Section 2.13 of the Development Agreement (defining "Estoppel Certificate") is renumbered to Section 2.14 and the following definition is added in the place of definition Section 2.13:

2.13 "Estate Gardens" means an area where ground burials are permitted and which may include retaining walls, benches, monuments, gardens and landscaping, governed by the restrictions set forth in Section 4(10.)(b.).

11. Sections 2.13 through 2.24, which include the definitions for *Estoppel Certificate*, *Exhibit*, *Existing General Regulations*, *Future General Regulations*, *General Regulations*, *General Plan*, *Includes*, *Mortgagee*, *Notice*, *Parties*, *Planning Commission* and *Project Specific Approvals*, are renumbered to Sections 2.14 through 2.25, respectively.

12. Section 3.1(1.)(c.) of the Development Agreement entitled *Buffer Area Landscaping/Irrigation System* is hereby amended to read as follows:

c. Buffer Area Landscaping/Irrigation System. The Buffer Area shall be landscaped and improved with an irrigation system. Except for slope areas, the Buffer Area shall be provided with a below ground permanent irrigation system. Slope areas shall be improved with an above-ground irrigation system consisting of U.V. resistant PVC piping. The landscaping shall be installed in accordance with a final landscape plan prepared by a licensed landscape architect which has been approved by the Planning Director and which fully complies with the preliminary landscape plan, attached as Exhibit "D," as amended (the "Final Landscape Plan"). The Final Landscape Plan submitted by Pacific View shall depict location of planting, the minimum number of planting required, and the type and size of plantings such that, in comparison with the Preliminary Landscape Plan, there will be the same screening of Community Mausolea, Family Mausolea and Building Sites E, D, F, G and H from the perspective of ground floor views of the existing residences adjacent to the eastern property line of the Property consistent with the 430 foot mean sea level elevation limitation in the "Height Limitation Area" designated on the Technical Site Plan (Exhibit "C," as amended).

13. Section 3.1(1.)(d.) of the Development Agreement entitled *Installation of Landscaping and Irrigation* is hereby amended to read as follows:

d. Installation of Landscaping and Irrigation. The installation of all required Buffer Area landscaping and related irrigation shall be initiated as described by Section 4.6 of this Agreement, but prior to issuance of building permits for the construction of the remaining phase of Sunset Court in Building Site G. Except as provided in Section 4.6 of this Agreement, the remainder of landscaping and related irrigation shall be installed during the individual Community Mausolea projects.

All landscaping within the "Height Limitation Area," including Building Sites E, F and G on Exhibit "C" of this Agreement, shall be maintained by Pacific View at or below 430 feet elevation above mean sea level in such a way so as to preserve night light, water and mountain views from existing residences.

14. Section 3.1(1.)(e.)(3) of the Development Agreement is hereby amended to read as follows:

(3) Slopes behind the new Family Mausolea in Building Site H shall conform to the Sections depicted in Exhibit "F," as amended.

15. Section 3.1(2.) of the Development Agreement entitled *Height Limit* is hereby amended to read as follows:

2. Height Limit. All structures shall comply with the 28/32-foot height limitation measured from the elevations set forth in Exhibit "C" of this Agreement. In addition, no structure or landscaping shall exceed 430 feet elevation mean sea level in the "Height Limitation Area," including Building Sites E, F and G on Exhibit "C" of the Development Agreement.

16. Section 3.1(4.) of the Development Agreement entitled *Mausoleum Design* is hereby amended to read as follows:

4. Mausoleum Design. All roofs, eaves and facias of new garden crypts and community mausolea shall be constructed of material, color, texture, thickness and pitch to blend with, and complement, the architectural style of the original structures within the park (e.g., Lagunita and Palm Courts). Blank walls of Community Mausolea in Building Sites E and G shall be screened in accordance with the Final Landscape Plan.

17. Section 3.1(9.) of the Development Agreement entitled *Archaeological and Paleontological Resources* is hereby amended to read as follows:

9. Archaeological and Paleontological Resources. Prior to issuance of a grading permit for development as provided in the First Amendment, the applicant shall demonstrate to the Planning Department that the project will comply with Council Policies K-4 and K-5 regarding archaeological and paleontological resource investigation, surveillance and recovery.

18. Section 3.2 of the Development Agreement entitled *Use Permit No. 3518 Conditions* is hereby amended to be entitled "*Use Permit No. 3518 and Use Permit No. 2006-040 Conditions.*"

19. Section 3.2(1.) of the Development Agreement is hereby amended to read as follows:

1. Exhibit "C" depicts the approximate size, configuration and location of building envelopes for future Community Mausolea to be constructed within the Property. Community Mausoleum shall mean any mausoleum building or crypt wall structure containing interment spaces capable of accommodating casketed remains, and which are available to the public at large. Future Community Mausolea shall be permitted only in Building Sites A, C, E and G and within the Building Envelopes specified on the Technical Site Plan (Exhibit "C," as amended).

20. Section 3.2(2.) is hereby amended to add new Subsections (f) and (g) to provide as follows:

f. Religious, ornamental and other vertical objects shall not be permitted on the roof or protrude above the roofline of the Family Mausolea located in Building Site H, Area 8.

g. Estate Gardens shall be constructed into the slope supported by retaining walls consistent with the visual simulations prepared by the City and as shown on Exhibit "F," as amended. No monuments, fences, gates or other elements except plant material shall exceed the top height of the walls of the Estate Gardens or the total height of the terraced slope.

21. Section 3.2(2.)(a.) of the Development Agreement is hereby amended to read as follows:

a. Family Mausolea and Columbaria shall not exceed 15 feet in height, 22 feet in width and 12 feet in depth; provided, however, in Building Site G, Family Mausolea and Columbaria shall not exceed 14 feet in height. In Building Site H, there shall be no more than six (6) Family Mausolea, as follows: a total of two (2) Family Mausolea may be built in Building Envelopes 5 and 6, and are limited in size to a maximum of 15 feet in height, 22 feet in width and 12 feet in depth; and in Building Envelopes 1, 2, 3, and 4, a total of four (4) Family Mausolea may be built, not to exceed a maximum of 17 feet in height, 22 feet in width and 17 feet in depth, as depicted on Exhibit "D," as amended.

22. Section 3.2(2.)(b.) of the Development Agreement is hereby amended to read as follows:

b. Family Mausolea and Columbaria shall be permitted in Building Site D. Family Mausolea and Estate Gardens shall be permitted in Building Site H. Pad height elevations and finish floor elevations for new Family Mausolea shall comply with elevations indicated on Exhibits "C," "D" and "F," as amended.

23. Section 3.2(3.) of the Development Agreement is hereby amended to read as follows:

3. The General Plan Amendment and Technical Site Plan provides for a maximum of 30,000 square feet of administrative offices and support facilities, 114,480 square feet of Community Mausolea, and 12,000 square feet of Family Mausolea. Square footage for Columbaria, if any, shall be deducted from Community or Family Mausolea allotments at Pacific View's option. The allotments described in this subsection include development on-site as of the date of this Agreement. As described in Section 4.1, overhangs, eaves, walkways, and similar architectural features and improvements shall not be counted against permitted square footage.

24. Section 3.2(10.) of the Development Agreement entitled *Minor Adjustments* is hereby amended to read as follows:

10. Minor Adjustments. Given the extended period of years over which the property will be developed, minor adjustments necessary for safety, maintenance, slope engineering, landscaping, the engineering of building pads, and the reorientation of structures within existing building envelopes, shall be allowed with the approval of the Planning Director, so long as such minor adjustments are consistent with the building envelopes and at or below the building height limits shown on Technical Site Plan Exhibit "C," as amended, and do not involve changes or additions to the number, type, height or placement of structures (other than changes in the orientation of structures within building envelopes specified in accordance with Exhibit "C," as amended).

25. Section 3.2 is hereby amended to add a new Subsection (11) to provide as follows:

11. All conditions of Use Permit No. 3518 and No. 2006-001 are hereby incorporated as conditions of this Development Agreement.

26. Section 4(2.)(e) of the Development Agreement is hereby amended to read as follows:

(e) Roof elevations of new Family Mausolea in Building Site H shall not exceed the heights indicated on Exhibits "D" and "F."

27. Section 4(2.)(f) of the Development Agreement is hereby amended to read as follows:

(f) Pad elevations of new Family Mausolea in Building Site H shall comply with the pad elevations indicated on Exhibits "D" and "F."

28. Section 4(5.) of the Development Agreement entitled *Phasing* is hereby amended to read as follows:

5. Phasing. Pacific View may develop the Community Mausolea in Building Sites E and G in one or more phases. For the purposes of this Agreement a "phase" shall mean the construction of one or more Community

Mausolea structure(s) within one or more of the Building Envelopes shown on the Technical Site Plan (Exhibit "C," as amended).

The first phase shall include the completion of Sunset Court within Building Site G (but may, in Pacific View's discretion, also include one or more additional Community Mausolea in Building Site G).

A minimum period of thirty (30) months shall be required to have elapsed between the completion of construction of any phase and the initiation of construction of any subsequent phase. Construction of each phase shall be completed within nine (9) months of the commencement of construction.

Subject to the requirement that Pacific View commence the additional screening of Sunset Court required by Section 4.4 and issuance of appropriate permits, construction of the first phase authorized by this Agreement may commence upon the Effective Date of the Development Agreement. The phasing requirements in this Agreement pertain exclusively to the grading and site preparation for, and construction of, new Community Mausolea and do not apply to any Family Mausolea, Columbaria or other improvement, structure, or appurtenance of the Property. The additional screening to Sunset Court required by Section 4.4 shall not be considered a "phase" for purposes of this Agreement.

29. Section 4(6.) of the Development Agreement entitled *Buffer Zone Grading and Landscaping* is hereby amended to read as follows:

Buffer Zone Grading and Landscaping. Pacific View shall commence study and analysis of the grading and landscaping for the Buffer area and Building Sites E & G within sixty days after expiration of the applicable Statute of Limitations, assuming no legal challenge has been filed to this Agreement or the Discretionary Approvals, and thereafter apply for all necessary permits. Grading for the Buffer Area and Building Sites E & G shall be completed within six (6) months after commencement of construction of the remainder of the Sunset Court Mausoleum in Building Site G. Pacific View shall also complete the installation of landscaping and irrigation systems in the entire Buffer Area as specified in the Final Landscape Plan within this six (6) month period. Pacific View shall be permitted to subsequently encroach into, remove a portion of or otherwise disturb Buffer Area landscaping and irrigation as specified in Section 3.1.1(B).

Within six (6) months of the Effective Date of the Development Agreement, Pacific View shall plant twenty-six (26) fifteen-gallon trees within Area 8 (as shown on Exhibits "C" and "D") designated on Exhibit "C" hereto, and shall plant five (5) twenty-four-inch box trees along the northeasterly boundary of Building Site D as shown in the Preliminary Landscape Plan.

In Building Site H, Pacific View shall plant landscape buffering consisting of a total of two (2) thirty-six-inch box trees on the slope around each Family

Mausoleum Building Envelope as shown on Exhibits "D" and "F," as amended. The trees shall be planted within (12) twelve months of the effective date of the First Amendment, or prior to the issuance of a building permit for the first structure, whichever is earlier. At the time of construction of any Family Mausoleum in Building Site H, one (1) additional 48" box tree shall be planted at the side or rear elevation of the structure and one (1) additional 36" box size tree shall be planted adjacent to the front elevation of the structure as depicted on Exhibit "D."

Prior to the issuance of a building permit for the first structure in Building Site H, Pacific View shall submit a Final Landscape Plan that depicts the location, type and size of all plantings so that, in comparison with the revised Preliminary Landscape Plan (Exhibit "D," as amended by the First Amendment), there would be the same amount of screening of Family Mausolea and Estate Gardens in Building Site "H", Area 8 as in the Preliminary Landscape Plan. The Final Landscape Plan shall be reviewed and approved by the Planning Department prior to the issuance of a building permit for the first structure.

Prior to issuance of a certificate of occupancy for any individual Family Mausoleum, Pacific View shall plant all trees determined by the City, in its sole discretion, to be necessary to screen the constructed Family Mausoleum in Building Site H from the ground floor views of the residential properties as depicted in the computer visual simulations attached and marked as Exhibit "J" and as shown on Exhibits "D" and "F," attached to the First Amendment.

30. Section 4(10.) (a) of the Development Agreement entitled *Building Site E* is hereby amended to read as follows:

(a) Building Site E

Except for the Community Mausoleum and Crypt Wall, Pacific View is permitted only below ground interment and the installation of plaques or memorials at or below grade in Building Site E. Pacific View shall not install pillow blocks, benches, memorials or other above grade objects (exclusive of landscaping as provided in the Final Landscape Plan and trash receptacles only as necessary). Construction of the Community Mausoleum and Crypt Wall in Building Site E shall not commence prior to January 1, 2014.

31. Section 7.2 of the Development Agreement entitled *Term of Agreement* is hereby amended to read as follows:

7.2 Term of Agreement. The term of the Development Agreement shall begin on the effective date of the First Amendment and continue for eighteen (18) years unless otherwise terminated or modified pursuant to this Agreement (including, but not limited to, the extension provisions of Section 11.16 hereof). In addition, the term of this Agreement shall be automatically

extended for an additional seven (7) year term if, at the end of the expiration of the initial eighteen (18) year term, Pacific View has not completed all of the development authorized by the Development Agreement and the First Amendment.

32. Section 7.4 of the Development Agreement entitled *Amendment of Agreement* is hereby amended to read as follows:

7.4 Amendment of Agreement. Notwithstanding the provisions of Section 65868 of the California *Government Code*, Pacific View waives any right it may have, now or in the future, to amend, change or modify the Development Agreement, and shall not amend, change or modify, or request or otherwise seek to amend, change or modify, the Development Agreement for a period of not less than fifteen (15) years from the effective date of the First Amendment to the Development Agreement. In the event there is a conflict between this provision agreeing not to amend, change or modify the Development Agreement with any other provision of the Development Agreement, statute, ordinance, regulation or law governing the Development Agreement, this provision and intent shall govern.

33. Section 11.1 of the Development Agreement entitled *Notices* is hereby amended to update the contact information for Pacific View, to read as follows:

To Pacific View: Pacific View Memorial Park
3500 Pacific View Drive
Newport Beach, CA 92663
Attention: Robert Motzkin

With a copy to: Clark & Green Associates
150 Paularino Ave., Suite 160
Costa Mesa, CA 92626
Attention: Michael Green

and a copy to: Hewitt & O'Neil LLP
19900 MacArthur Blvd., Suite 1050
Irvine, CA 92612
Attention: Dennis D. O'Neil, Esq.

34. The Development Agreement is hereby amended to provide that all sections of the Development Agreement containing the words "Agreement," "this Agreement" or "modified Agreement" shall also include a reference to this First Amendment.

35. The term "Approval Date" as applied to those sections in the Development Agreement means the date on which the City Council voted to adopt the Adopting Ordinance approving the Development Agreement. The term "First Amendment Approval Date" means the date on which the City Council voted to adopt the Adopting Ordinance approving the First Amendment.

36. The Development Agreement is hereby amended to provide that all sections of the Development Agreement referencing Exhibit "C" (Technical Site Plan), Exhibit "D" (Preliminary Landscape Plan) and Exhibit "F" (Building Site E & H Section Diagram) shall be as amended.

37. Counterparts. This First Amendment may be executed in counterparts, each of which so executed shall be deemed an original, and such counterparts together shall constitute but one Amendment.

38. No Other Changes. Except as modified by this First Amendment and Exhibits "C," "D," "F" and "J," the terms and conditions of the Development Agreement, including this First Amendment and the amendments to Exhibits "C," "D" and "F" and new Exhibit "J," remain in full force and effect and shall be incorporated as a part of and interpreted as one integrated agreement covering the subjects included therein.

[Signature page follows]

IN WITNESS WHEREOF, City and Pacific View have entered into this First Amendment on the date first written above.

CITY:

CITY OF NEWPORT BEACH, a Charter City and municipal corporation organized and existing under the laws of the State of California

By: 

Steve Rosansky, Mayor

APPROVED AS TO FORM:

By: 

Robin Clauson, City Attorney

ATTEST:

By: 

LaVonne Harlless, City Clerk



PACIFIC VIEW:

SCI CALIFORNIA FUNERAL SERVICES, INC. doing business as PACIFIC VIEW MEMORIAL PARK

By: 

Name: Lori E. Spilde

Title: vice president

By: 

Name: Dawn Narveson

Title: Vice President

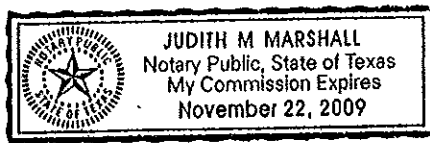
All Signatures to be Notarized

TEXAS
STATE OF CALIFORNIA)
HARRIS) ss.
COUNTY OF ORANGE)

On October 26, 2007, before me, Judith M. Marshall, a Notary Public in and for said County and State, personally appeared Lori E. Spilde, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) (is/are) subscribed to the within instrument, and acknowledged to me that (he/she/they) executed the same in (his/her/their) authorized capacit(-y/-ies), and that by (his/her/their) signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[SEAL]



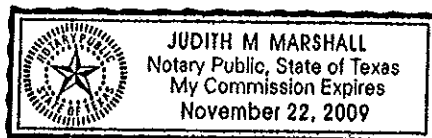
Judith M. Marshall
Signature of Notary Public

TEXAS
STATE OF CALIFORNIA)
HARRIS) ss.
COUNTY OF ORANGE)

On October 26, 2007, before me, Judith M. Marshall, a Notary Public in and for said County and State, personally appeared Dann Namerson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) (is/are) subscribed to the within instrument, and acknowledged to me that (he/she/they) executed the same in (his/her/their) authorized capacit(-y/-ies), and that by (his/her/their) signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[SEAL]



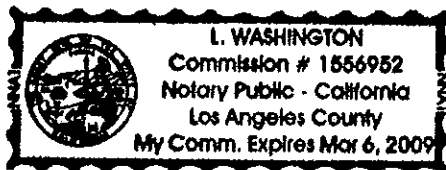
Judith M. Marshall
Signature of Notary Public

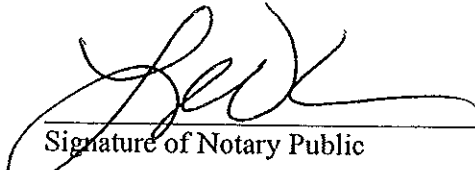
STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On November 7, 2007, before me, Lillian Washington, a Notary Public in and for said County and State, personally appeared Steven Rosansky, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) (is/are) subscribed to the within instrument, and acknowledged to me that (he/she/they) executed the same in (his/her/their) authorized capacity(ies), and that by (his/her/their) signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[SEAL]




Signature of Notary Public

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On _____, before me, _____, a Notary Public in and for said County and State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) (is/are) subscribed to the within instrument, and acknowledged to me that (he/she/they) executed the same in (his/her/their) authorized capacity(-y/-ies), and that by (his/her/their) signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[SEAL]

Signature of Notary Public